Oriental Insurance Co Ltd & Anor v Minister of Finance

HIGH COURT (JOHORE BAHRU) — ORIGINATING MOTION NO 25-5/1990
LC VOHRAH J
11 AUGUST 1992

Constitutional Law *— Right to private property — Forfeiture of motor vehicle — Order of Minister — Refusal to release — Minister acting in good faith — Misdirection*

On 12 October 1986, while the second applicant was having a meal in Johore Bahru, his car was stolen. On 8 August 1989, the car was seized by the customs authorities as it was found to be have been used in the conveying of contraband textiles. The car was accordingly forfeited after an enquiry as there had been no prosecution because the driver of the car at the time of the offence had escaped. Following the forfeiture the applicants appealed to the respondent for the return of the car. This appeal was rejected. The applicants applied for an order of certiorari to quash the said order rejecting the request for return of the car.

Held, allowing the application:

(1) It was obvious in the present case that no wrongdoing could in any way be attributed to any of the applicants. In the circumstances, the car which had been stolen was in fact being deliberately withheld even though its ownership was known, an action so obviously contrary to public policy which dictated protection of a person's right to private property.

(2) An objective standard must be applied when making a decision such as the Minister was required to make. It was clear that if an objective standard had been applied the decision of the Minister not to return the car to the rightful owner in the light of the facts enumerated was irrational being so outrageous in its defiance of logic or accepted moral standards that the consequence was manifest injustice caused to someone who was completely innocent of any wrongdoing and had been deprived of property.

[Bahasa Malaysia summary

Pada 12 Oktober 1986, semasa pemohon kedua sedang makan malam di Johor Bahru, kereta beliau telah dicuri. Pada 8 Ogos 1989, kereta itu telah dirampas oleh pihak kastam kerana didapati bahawa ia digunakan untuk mengangkut tekstil kontraban. Kereta itu dirampas selepas siasatan diadakan, tetapi pendakwaan tidak dapat dibawa kerana pemandu kereta yang bersalah itu telah berjaya melepaskan diri. Selepas perampasan itu, pemohon-pemohon telah merayu kepada

penentang supaya kereta itu dikembalikan. Rayuan itu telah ditolak. Pemohon-pemohon kemudiannya telah memohon perintah certiorari untuk membatalkan perintah menolak permintaan mereka supaya kereta itu dikembalikan.

Diputuskan, membenarkan permohonan itu:

(1) Jelas bahawa, dalam kes ini, pemohon-pemohon tidak bersalah. Kereta yang telah dicuri itu sengaja ditahan walaupun pemiliknya diketahui. Ini merupakan perbuatan yang menentang polisi awam yang melindungi hak seseorang untuk mempunyai harta persendirian.

(2) Taraf objektif mesti digunakan apabila membuat keputusan sepertimana yang Menteri dikehendaki membuat. Jika taraf objektif telah digunakan, jelas bahawa keputusan Menteri enggan mengembalikan kereta itu kepada pemilik sah berdasarkan fakta-fakta yang telah disebut satu per satu, adalah tidak rasional, kerana ianya mengingkari logik ataupun standard moral yang sudah diterima dengan begitu melampau sekali sehingga menyebabkan ketidakadilan yang jelas ke atas seorang yang tidak bersalah langsung dan yang telah dirampas hartanya.]

Cases referred to

1 *CCSU v Minister for the Civil Service* [1984] 3 All ER 935 (refd)
2 *Sinjo Credit & Leasing Sdn Bhd v Minister of Finance Malaysia* [1987] 2 CLJ 263 (refd)
3 *Minister of Labour, Malaysia v National Union of Journalists, Malaysia and another appeal* [1991] 1 MLJ 24 (folld)

T Balaskanda (*Zaman & Associates*) for the applicants.
Abdul Roni bin Abdul Rahman (State Counsel) for the respondent.

LC Vohrah J: This was an application for an order of certiorari to remove into this court for the purpose of having it quashed the order dated 13 December 1989 made by the Deputy Minister of Finance exercising constitutionally the powers of the respondent whereby the applicants' application under s 129 of the Customs Act 1967 ('the said section') for the return of a car bearing registration number SBB 6676B was rejected.

The facts relevant to the application were as follows. On the night of 12 October 1986 whilst the second applicant and his friends were having a meal at night at the Sentosa Complex, Johore Bahru, his car which was parked there was stolen. He reported the theft to the police the next morning at 12.35am soon after the incident. On 26 May 1988 he was informed by the Customs Department that the car had been seized for conveying contraband in the form of textiles and on 8 August 1989 the car was forfeited by the magistrates' court after an enquiry as there had been no prosecution because the driver of the car at the time of the offence had escaped. Following the forfeiture the applicants appealed to the respondent

by way of the application under the said section for delivery of the car within one month from the date of forfeiture as statutorily stipulated. This appeal was rejected by the Deputy Minister on 13 December 1989.

There was no dispute that the second applicant had subrogated his rights and remedies in respect of the car to the first applicant after settlement of the second applicant's claim by the first applicant under a policy of insurance. There was also no dispute that the second applicant was an innocent party in respect of the commission of the customs offence.

The sole question for determination was whether the Deputy Minister had misdirected himself in rejecting the application for delivery by failing to take into account self-evident facts which were favourable to the applicants.

In *CCSU v Minister for the Civil Service*,[1] Lord Diplock had this to say (at p 950):

> ... Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds ...
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> By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.
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> By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (see *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1947] 2 All ER 680, [1948] 1 KB 223). *It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system.* To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards (Inspector of Taxes) v Bairstow* [1955] 3 All ER 48, [1956] AC 14 of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. 'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review.
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> I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the procedings of an administrative tribunal at all. (Emphasis added.)

On behalf of the applicants it was contended by learned counsel, Mr Balaskanda, that the decision of the Deputy Minister could not stand on the ground of 'irrationality' because he had erred in law on the face of the

record in that he had misdirected himself by failing to take into account the following facts:

(1) that the car used for the commission of the offence had actually been stolen;
(2) that the applicants had not committed any offence under the Act pursuant to which the car was forfeited;
(3) that public policy demanded that stolen property be returned to its rightful owner;
(4) that the fact of not returning stolen property to the rightful owner was against the public good; and
(5) that the applicants had been innocent victims of two crimes, the first under the Penal Code and the second under the Act.

On the other hand, it was contended by learned Federal Counsel on behalf of the respondent that the Deputy Minister had based his decision on facts which were put before him and was fully aware of the status of the car when he rejected the appeal from the applicants under the said section and consequently the exercise of his discretion in the circumstances was not subject to judicial intervention. Of the authorities cited by learned Federal Counsel I found the case of *Sinjo Credit & Leasing Sdn Bhd v Minister of Finance Malaysia*[2] of any real relevance wherein it was observed by Shankar J in relation to the said section that the mere fact that the owner of a vehicle was innocent of the offence for the commision of which the vehicle was used, did not entitle him as a matter of right to have an order from the Minister for the return of his vehicle to him. It was also observed by the learned judge that the said section did not impose upon the Minister any duty to give reasons for his decision but required that he 'consider all the material placed before him and decide in good faith.' The application for leave for an order of certiorari in that case was dismissed and the learned judge found that there was evidence from the notes of evidence of the inquiry which the Minister had had before him that the hirer was thoroughly unreliable from which it could be inferred that the hire-purchase company did not take adequate steps to investigate the bona fides of the person to whom they were providing the car.

It was obvious to me in the present case that no wrong-doing could in any way be attributed to any of the applicants. It occurred to me in the circumstances that the car which had been stolen was in fact being deliberately withheld even though its ownership was known, action so obviously contrary to public policy which dictates protection of a person's right to private property. If the contention put forward by the learned Federal Counsel were to be accepted it would in effect have meant the recognition of the proposition that when discretionary powers are given to a member of the executive the test to be applied is a subjective test, a proposition which was rejected by the Supreme Court in *Minister of Labour, Malaysia v National Union of Journalists, Malaysia and another appeal*[3] at p 28. It was clear that if an objective standard had been applied, the decision of the Deputy Minister not to return the car to the rightful owner in the light of the facts enumerated by Mr Balaskanda was irrational being so outrageous

in its defiance of logic and/or accepted moral standards that the consequence was manifest injustice caused to someone who was completely innocent of any wrong-doing and had been deprived of property, his ownership of which was never in question. In the circumstances I was of the view that the Deputy Minister having professedly exercised good faith must then in rejecting the appeal have misdirected himself by failing to take into account self-evident facts favourable to the applicants.

I accordingly made an order in terms of the application.

Order accordingly.

Reported by Mathavan Devadas